In our judgment, the answer to this appeal depends upon the proper construction to be given to the endorsement contained in private motor car insurance policy No. W/PC/0069.

It was not in dispute that the endorsement in the instant case was worded differently from that in the *Malaysian Australian Finance* case, and that the principal object of the amendment appeared to exclude the rule laid down in the *M.A.F.* case from applying to this policy. The amendment used clear and precise language and, in our opinion, was inserted into the endorsement *ex abundanti cautela.* Since learned counsel for the respondent did not address this court on the first limb of the amendment, it was reasonable to assume that he had tacitly accepted the correctness of the submission advanced by learned counsel for the appellant. We therefore rule that the *M.A.F.* case was distinguishable from the facts of the present case.

The next question to consider was whether learned counsel for the respondent had made good his contention that the endorsement amounted to an absolute assignment and the onus of proving this rested on the respondent.

An assignment means the transfer of contractual rights and liabilities to a third party with or without the concurrence of the other party to the contract. This question was considered by the Federal Court in the case of *Nouvau Mont Dor (M) Sdn. Bhd.* v. *Faber Development Sdn. Bhd.*[2] At p. 270, Seah F.J. (as he then was) in giving the judgment of the court said:

> "It is plain that in every case of this kind, all the terms of the instrument must be considered; and whatever may be the phraseology adopted in some particular part of it, if, on consideration of the whole instrument, it is clear that the intention was to give a charge only, then the action must be in the name of the assignor. While, on the other hand, if it is clear from the instrument as a whole that the intention was to pass all the rights of the assignor in the debt or chose in action to the assignee, then the case will come within section 25(6) of the Judicature Act 1873 and the action must be brought in the name of the assignee (per Mathew L.J. in *Hughes* v. *Pump House Hotel Co. Ltd.* (1902) 2 K.B. 190 at 195)."

Applying this to the facts of this case, we were constrained to hold that not only learned counsel for the respondent had failed to discharge his burden but also it imposed a construction that flies in the face of the amendment contained in the endorsement. The relevant part of the amendment reads:

> "... and nothing herein shall be construed as ... an assignment (whether legal or equitable) by the insured to the owners of his rights benefits and claims under this policy. It is lastly understood and agreed that the insured shall not assign his rights benefits and claims under this policy without the prior consent in writing of the corporation."

The rights regarding assignment were clearly set out in the amendment and since learned counsel for the respondent was unable to produce any written consent duly signed by the appellant, we find that there was no lawful assignment of the policy by the insured, Wong Kim Miew, to the respondent.

For the above reasons, we set aside the decision of the High Court and restore the judgment of the President of the Sessions Court. The appeal is allowed with costs here and in the court below to be taxed. The deposit to be refunded to the appellant.

Appeal allowed.

Solicitors: *Azim Ong & Krishnan; Henry Cheah.*

HARRISONS & CROSFIELDS (M) SDN. BHD. v. PEMUNGUT HASIL TANAH, WILAYAH PERSEKUTUAN

[S.C. (Abdul Hamid C.J. (Malaya), Hashim Yeop A. Sani & Syed Agil Barakbah S.C.JJ.) 20, 21 April & 11 May 1988]

[Kuala Lumpur – Supreme Court Civil Appeal No. 101 of 1987]

Land Law – Land Acquisition – Award – Development potential of lands – Surveyor's fee.

This was an appeal from the decision of the High Court in a land acquisition case. The lands acquired were located in the prestigious areas of Kenny Hill and adjacent to the Prime Minister's Department complex and within a short distance from an already developed commercial area. Evidence was given that the lands were in a prestigious location and, despite their hilly characteristics, were suitable for high quality development. The learned judge of the High Court had increased the award of the Collector by 10% but had disallowed the surveyor's fees.

Held, dismissing the appeal: (1) the learned judge did not give due and adequate consideration to the development potential of the lands acquired. While the learned judge had correctly stated that the government valuation had not taken into account the potential for mixed development for condominium and commercial uses, he was

not totally correct in holding that the potential for mixed development was limited. The amount awarded would therefore be increased from 10% to 20% as additional to the total award as the more accurate figure to reflect the development potentials of the lands;

(2) the learned judge was correct in refusing to make an award to include the surveyor's fee.

Case referred to:

(1) *Consolidated Plantation Bhd.* v. *Pemungut Hasil Tanah, Kelang* [1984] 1 M.L.J. 273 (expld).

SUPREME COURT.

Wong Chong Wah (*Wong Chee Lim (Miss)* with him) for the appellant.

P.M. Mahalingam (Senior Federal Counsel) for the respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani S.C.J. (delivering the grounds of decision of the court): In a land acquisition reference to the learned judge (Harun J.), the award of $23,561,930.00 made by the Collector in respect of the lands acquired (C.T. 1065 for Lot No. 1, C.T. 6144 for Lot No. 18 and C.T. 6987 for Lot No. 20 section 51, Grant 2409 for Lot Nos. 7 and 10 and Grant 2789 for Lot No. 11 section 71) was increased by the learned judge by 10%. The learned judge also disallowed the surveyor's fees based on 2½% of the total award or such other sum or percentage as the court might deem fit. The appeal was against both these orders.

As regards the award, we find that the learned judge did not give due and adequate consideration to the development potential of the lands acquired. The lands were acquired for the public purpose of building a government department, for public utilities and for housing and commercial.

The lands in question were all located in the prestigious area of Kenny Hill and adjacent to the Prime Minister's Department complex and within a short distance from an already developed commercial area. The architect and city planner gave evidence (which was unchallenged) that the lands were in a prestigious location and that despite their hilly characteristics were suitable for high quality development. There was, according to the city planner, a need or demand for such quality housing. The development proposed by the appellants would cover only 12 acres of the 81.38 acres of the lands, that is, only 14% of the site and the rest would be kept for space, recreation and landscaping (PW1's evidence, pp. 20-22 of the appeal record).

There is no written judgment but it would seem that the learned judge ignored the city planner's evidence and stated in his sketchy note that because of the hilly terrain of the lands "bungalow development not likely – all the land that can be used has been used for bungalow. Remainder of the land cannot be used."

The learned judge, however, correctly stated that the government valuation did not take into account the potential for mixed development for condominium and commercial uses but was not totally correct in holding that the potential for mixed development was limited.

We therefore allowed the appeal on this point and increased from 10% to 20% as additional to the total award as the more accurate figure to reflect the development potentials of the lands.

As regards the appellant's dissatisfaction on the learned judge's refusal to award the surveyor's fee, we are unable to agree with the appellant as we find nothing in the provisions of the Land Acquisition Act 1960 and the Schedule thereto to justify the making of an award to include the surveyor's fee. *Consolidated Plantation Bhd.* v. *Pemungut Hasil Tanah, Kelang*[1] is not an authority for allowing the surveyor's fee as the Federal Court judgment clearly states that it was confined only to the question of adequacy of the award of "$231,000.00 as the cost of turfing as compensation for the loss of water supply to the mill". See judgment at p. 274.

The learned judge in this case was correct in refusing to make an award to include the surveyor's fee and we accordingly dismissed the appeal on this point.

Appeal dismissed.

Solicitors: *Skrine & Co.*